

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ELRAYAH ELAMIN SAADALLA,

Plaintiff,

Case No. 1:07-cv-638

v.

Honorable Janet T. Neff

UNKNOWN BEARDSLEE et al.,

Defendants.

/

REVISED REPORT AND RECOMMENDATION

This is a civil rights action brought by a state prisoner pursuant to 42 U.S.C. § 1983.

The Court has granted Plaintiff leave to proceed *in forma pauperis*. Under the Prison Litigation Reform Act, PUB. L. No. 104-134, 110 STAT. 1321 (1996), the Court is required to dismiss any prisoner action brought under federal law if the complaint is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant immune from such relief. 28 U.S.C. §§ 1915(e)(2). The Court must read Plaintiff's *pro se* complaint indulgently, *see Haines v. Kerner*, 404 U.S. 519, 520 (1972), and accept Plaintiff's allegations as true, unless they are clearly irrational or wholly incredible. *Denton v. Hernandez*, 504 U.S. 25, 33 (1992). Applying these standards, I recommend that Plaintiff's complaint be dismissed for failure to state a claim.

Discussion

I. Factual allegations

Plaintiff is currently released on parole, but the events underlying his complaint occurred at Riverside Correctional Facility (RCF) during Plaintiff's incarceration. In his *pro se* complaint,¹ Plaintiff alleges that he asked Defendant Beardslee to notarize a power of attorney on February 27, 2007. (Compl. at 3, docket #1.)² Plaintiff further alleges that Defendant Beardslee asked him to come back the next day, but still refused to notarize his document at that time. (*Id.*) Plaintiff attempted to resolve the situation by speaking to Sergeant Graig. (*Id.*) When the issue remained unresolved, Plaintiff filed a grievance against Defendant Beardslee on February 28, 2007.

On March 5, 2007, Plaintiff was transferred from RCF, a security level II facility, to Mound Correctional Facility (NRF), another security level II facility. (*Id.*) Plaintiff alleges that this transfer was done in retaliation for filing a grievance against Defendant Beardslee. (*Id.* 3-4.) Plaintiff asserts that he filed a grievance in response to the transfer and sent letters to the Director of the Michigan Department of Corrections (MDOC). (*Id.* at 4.) Plaintiff states that he was unable to take the test to obtain his General Educational Development Test (GED) due to being transferred prior to his testing date at RCF and the long waiting list at NRF. (*Id.* at 4-5.)

For relief, Plaintiff seeks compensatory and punitive damages, and damages for mental and emotional suffering in the amount of "WHAT EVER [sic] THE COURT and/or A JURY MAY FEEL IS JUST" along with costs and fees. (Compl. at 10.) In the supplement, Plaintiff seeks

¹Plaintiff also filed a supplement to his complaint on September 17, 2007 (docket #14), which essentially re-argues the points raised in his original complaint and attaches over 100 pages of exhibits.

²The Court will use the page numbers assigned by CM/ECF for ease and clarity since Plaintiff has used some of the same page numbers more than once in his complaint.

\$50,000.00 for “compensatory relief, \$100,000.00 for mental and emotional damages, \$25,000.00 for punitive damages, and “court costs and fees as well as any additional relief that the Plaintiff may be entitled too [sic] as the winning party.” (Supp. at 6, docket #14.)

II. Failure to state a claim

A complaint fails to state a claim upon which relief can be granted when it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations of the complaint. *Jones v. City of Carlisle*, 3 F.3d 945, 947 (6th Cir. 1993). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege the violation of a right secured by the federal Constitution or laws and must show that the deprivation was committed by a person acting under color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988); *Street v. Corr. Corp. of Am.*, 102 F.3d 810, 814 (6th Cir. 1996). Because § 1983 is a method for vindicating federal rights, not a source of substantive rights itself, the first step in an action under § 1983 is to identify the specific constitutional right allegedly infringed. *Albright v. Oliver*, 510 U.S. 266, 271 (1994).

A. **Retaliation**

Retaliation based upon a prisoner’s exercise of his or her constitutional rights violates the Constitution. *See Thaddeus-X v. Blatter*, 175 F.3d 378, 394 (6th Cir. 1999) (en banc). In order to set forth a First Amendment retaliation claim, a plaintiff must establish that: (1) he was engaged in protected conduct; (2) an adverse action was taken against him that would deter a person of ordinary firmness from engaging in that conduct; and (3) the adverse action was motivated, at least in part, by the protected conduct. *Thaddeus-X*, 175 F.3d at 394. Moreover, Plaintiff must be able to prove that the exercise of the protected right was a substantial or motivating factor in the

defendant's alleged retaliatory conduct. *See Smith v. Campbell*, 250 F.3d 1032, 1037 (6th Cir. 2001) (citing *Mount Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 287 (1977)).

Filing a grievance is constitutionally protected conduct under the First Amendment. *See Smith v. Campbell*, 250 F.3d 1032, 1037 (6th Cir. 2001); *Noble v. Schmitt*, 87 F.3d 157, 162 (6th Cir. 1996). Plaintiff, however, cannot show that his transfer to NRF was an adverse action taken against him from filing a grievance against Defendant Beardslee. As the Sixth Circuit explained in *Ward v. Dyke*, 58 F.3d 271 (6th Cir. 1995):

Prisoners do not have a constitutional right to be incarcerated in any particular institution. *See Meachum v. Fano*, 427 U.S. 215 (1976). Moreover, the Supreme Court has held repeatedly that the ability to transfer prisoners is essential to prison management, and that requiring hearings for such transfers would interfere impermissibly with prison administration. *Id.*; *Olim v. Wakinekona*, 461 U.S. 238 (1983); *Montanye v. Haymes*, 427 U.S. 236 (1976). “Whatever expectation the prisoner may have in remaining at a particular prison so long as he behaves himself, it is too ephemeral and insubstantial to trigger procedural due process protections as long as prison officials have discretion to transfer him for whatever reason or for no reason at all.” *Meachum*, 427 U.S. at 228.

Ward, 58 F.3d at 274. “Since prisoners are expected to endure more than the average citizen, and since transfers are common among prisons, ordinarily a transfer would not deter a prisoner of ordinary firmness from continuing to engage in protected conduct.” *Siggers-El v. Barlow*, 412 F.3d 693, 701 (6th Cir. 2005). *See, e.g., Smith v. Yarrow*, 78 F. App’x. 529, 543 (6th Cir. 2003) (“transfer from one prison to another prison cannot rise to the level of an adverse action because it would not deter a person of ordinary firmness from the exercise of his First Amendment rights”) (internal quotation marks omitted). If, however, a foreseeable consequence of a transfer would be to substantially inhibit a prisoner’s ability to access the courts, then such a transfer could be considered an “adverse action” that would deter a person of ordinary firmness from continuing to engage in the

protected conduct. *See Sigger-El*, 412 F.3d at 702 (holding that a transfer was an “adverse action,” where the transfer resulted in plaintiff losing a high paying job that paid for his lawyer fees and moved him further from the attorney); *Johnson v. Beardslee*, No. 1:06-CV-374, 2007 WL 2302378, at *5 (W.D. Mich. Aug. 8, 2007).

Plaintiff’s transfer was from one level II facility to another level II facility. Plaintiff has no constitutional right to remain at a specific facility or to prevent a transfer to another level II facility for a permissible reason. *Ward*, 58 F.3d at 274. Plaintiff does not allege that his access to the courts was compromised as a result of the transfer; he only alleges that he was unable to take the test for his GED. Plaintiff does not have a federally cognizable liberty interest in participating in educational programs. Federal courts have consistently found that prisoners have no constitutionally protected liberty interest in prison vocational, rehabilitation, and educational programs based on the Fourteenth Amendment. *See, e.g., Newsom v. Norris*, 888 F.2d 371, 374 (6th Cir. 1989) (no constitutional right to prison employment); *Ivey v. Wilson*, 832 F.2d 950, 955 (6th Cir. 1987) (“[N]o prisoner has a constitutional right to a particular job or to any job”); *Moody v. Daggett*, 429 U.S. 78, 88 n.9 (1976) (Due Process Clause not implicated by prisoner classification and eligibility for rehabilitative programs, even where inmate suffers “grievous loss”); *Antonelli v. Sheahan*, 81 F.3d 1422, 1431 (7th Cir. 1995) (participation in a rehabilitative program is a privilege that the Due Process Clause does not guarantee); *Rizzo v. Dawson*, 778 F.2d 527, 531 (9th Cir. 1985) (no constitutional right to rehabilitative services); *Carter v. Morgan*, No. 97-5580, 1998 WL 69810, at *2 (6th Cir. Feb. 10, 1998) (no constitutional right to educational classes); *Tribell v. Mills*, No. 93-5399, 1994 WL 236499, at *1 (6th Cir. June 1, 1994) (“[N]o constitutional right to vocational or educational programs”). Under these authorities, Plaintiff has no constitutional claim arising from

his alleged inability to take the test for his GED because of his transfer to NRF. Therefore, the transfer is insufficient to constitute an adverse action and Plaintiff fails to state a claim for retaliation.

B. Access to Notary

To the extent Plaintiff alleges violations of his constitutional rights because Defendant Beardslee did not notarize a letter at Plaintiff's request, Plaintiff fails to state a claim because he makes no allegation or showing that he was denied access to the courts. (Compl. at 3; Suppl. at 1.) It is well-established that prisoners have a constitutional right of access to the courts. *See Bounds v. Smith*, 430 U.S. 817, 821 (1977). In addition to law libraries or alternative sources of legal knowledge, the states must provide indigent inmates with "paper and pen to draft legal documents, notarial services to authenticate them, and with stamps to mail them." *Id.* at 824-25. An indigent prisoner's constitutional right to legal resources and materials is not, however, without limit. In order to state a viable claim for interference with his access to the courts, a plaintiff must show "actual injury." *Lewis v. Casey*, 518 U.S. 343, 349 (1996); *see also Talley-Bey v. Knebl*, 168 F.3d 884, 886 (6th Cir. 1999); *Knop v. Johnson*, 977 F.2d 996, 1000 (6th Cir. 1992); *Ryder v. Ochten*, No. 96-2043, 1997 WL 720482, at *1-2 (6th Cir. Nov. 12, 1997). In other words, a plaintiff must plead and demonstrate that the shortcomings in the prison legal assistance program or lack of legal materials have hindered, or are presently hindering, his efforts to pursue a nonfrivolous legal claim. *Lewis*, 518 U.S. at 351-353; *see also Pilgrim v. Littlefield*, 92 F.3d 413, 416 (6th Cir. 1996).

Plaintiff did not seek Defendant Beardlee's notary services to pursue a legal claim. He requested Defendant Beardslee notarize a "document as a power of attorney to relase [sic] value property [sic]." (Suppl. at 3.) There is no allegation that this document was in any way related to Plaintiff's pursuit of a nonfrivolous legal claim. Therefore, Plaintiff fails to state a claim.

Recommended Disposition

Having conducted the review now required by the Prison Litigation Reform Act, I recommend that Plaintiff's complaint be dismissed for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2). Should this report and recommendation be adopted, the dismissal of this action will count as a strike for purposes of 28 U.S.C. § 1915(g).

I further recommend that the Court find no good-faith basis for appeal within the meaning of 28 U.S.C. § 1915(a)(3). *See McGore v. Wrigglesworth*, 114 F.3d 601, 611 (6th Cir. 1997).

/s/ Timothy P. Greeley

TIMOTHY P. GREELEY
UNITED STATES MAGISTRATE JUDGE

Dated: November 14, 2007

NOTICE TO PARTIES

Any objections to this Report and Recommendation must be filed and served within ten days of service of this notice on you. 28 U.S.C. § 636(b)(1)(C); FED. R. CIV. P. 72(b). All objections and responses to objections are governed by W.D. Mich. LCivR 72.3(b). Failure to file timely objections may constitute a waiver of any further right of appeal. *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981); *see Thomas v. Arn*, 474 U.S. 140 (1985).